

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

4 INDECK KEYSTONE ENERGY,)
LLC, a Delaware limited)
liability company,)
5)
Plaintiff,) CIVIL ACTION
6)
vs.) No. 04-CV-325E
7)
VICTORY ENERGY OPERATIONS,) Judge Sean J. McLaughlin
8 LLC, a Delaware limited)
liability company,)
9)
Defendant.)

13 The videotape deposition of MARK WHITE taken on
14 behalf of the Plaintiff before Pamela B. Stinchcomb,
15 Certified Shorthand Reporter in and for the State of
16 Oklahoma, on the 14th day of October, 2005, in the
17 City of Tulsa, State of Oklahoma, pursuant to the
18 stipulations of the parties.

PAMELA B. STINCHCOMB, CSR #1544
DAVIDSON REPORTING SERVICE
5508 South Lewis Avenue
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(918) 745-9959

COPY



1 A. Yes, sir.

2 Q. When did you join Victory?

3 A. I joined Victory in 2003, August of 2003.

4 Q. Have you been general manager of Victory,
5 which I'll sometimes refer to as VEO, continuously
6 from August of 2003 to the present?

7 A. Yes, sir.

8 Q. To whom do you report?

9 A. John Viskup and Jim Sponder.

10 Q. What is John Viskup's title with VEO?

11 A. President.

12 Q. What is Jim Sponder's title with VEO?

13 A. Service manager.

14 Q. Do you have an ownership interest in VEO?

15 A. I do not.

16 Q. Is any aspect of your compensation based on
17 commissions?

18 A. I was on a bonus program for the previous
19 calendar year, which has expired.

20 Q. Was that bonus in any way related to the
21 sale of Keystone watertube boilers?

22 A. It was based on the overall sales of the
23 company.

24 Q. Which would include the Keystone boilers?

25 A. Yes, sir.

1 Q. Did you receive a bonus?

2 A. Yes, sir.

3 Q. Can you allocate any of the bonus to the
4 sales of Keystone boilers?

5 A. Not directly.

6 Q. Indirectly?

7 A. Indirectly they would have been part of the
8 overall sales of the company.

9 Q. What was the amount of the bonus?

10 A. It was based on my salary at the time, and
11 I believe it was in the neighborhood of about
12 \$20,000, approximately.

13 Q. Are John Viskup and Jim Sponder the only
14 two owners of VEO?

15 A. To my knowledge.

16 Q. Do you know what their respective ownership
17 interests are?

18 A. I don't.

19 Q. What's your educational background?

20 A. I graduated with a Bachelor of Science in
21 1984 from Wayne State College in Wayne, Nebraska.

22 Q. I'm sorry, what was the name of the
23 college?

24 A. Wayne State College in Wayne, Nebraska.

25 Q. Are you an engineer?

1 A. No, I'm not.

2 Q. Have you ever taken any engineering
3 courses?

4 A. In college, you know, industrial-type
5 classes. How would you define engineering courses?

6 Q. Any courses that an engineering major would
7 take.

8 A. No.

9 Q. When you say Bachelor of Science, was there
10 a particular area in which you received your degree?

11 A. Industrial education, non-teaching.

12 Q. What does industrial education mean?

13 A. A variety of industrial courses and also
14 business courses that one would take so you have a --
15 a background in industrial project management and
16 manufacturing-type applications, process law
17 environment, as well as business law, accounting,
18 statistics, et cetera.

19 Q. Did you pursue any further education after
20 college?

21 A. Just seminars and so forth.

22 Q. Did you ever attend any seminars on
23 watertube boilers?

24 A. No.

25 Q. What did you do after college?

1 Division?

2 A. The Zurn Energy Division, yes.

3 Q. Why did you leave Vogt?

4 A. Well, Vogt was for sale at the time. I
5 wasn't really interested. There was some degree of
6 uncertainty. My superior, Jim Davis, had left. I
7 liked working for Jim. Jim actually went to work for
8 the energy division at Zurn and asked if I'd like to
9 come up there. And I enjoyed working for Jim, so I
10 accepted that offer and went to work for Zurn.

11 Q. How long did you work for Zurn?

12 A. Approximately ten years.

13 Q. What was your title at Zurn?

14 A. I had various titles. I believe the title
15 when I arrived was account manager, then sales
16 manager and director of sales and marketing.

17 Q. Was director of sales and marketing the
18 highest position you attained?

19 A. Yes, sir.

20 Q. What were the products that you sold for
21 Zurn?

22 A. I was responsible for HRSGs, solid fuel
23 systems, to some degree, Keystone watertube boilers.

24 Q. What period of time were you responsible
25 for Keystone watertube boilers?

1 would run across an application where we might sell a
2 couple of smaller units. We generally found that we
3 weren't really competitive in that market.

4 Q. Why not?

5 A. Well, you have to understand the Zurn
6 Energy Division wasn't set up to compete with low
7 overhead, small companies that were providing small
8 watertube package boilers for industrial steam
9 markets. It's difficult to compete when you have
10 much larger and higher overheads and you have a
11 sophisticated engineering system to compete with
12 somebody who's much more simplified.

13 Q. Did you develop an understanding as to the
14 Keystone watertube technology?

15 A. Generally. I wouldn't call myself an
16 expert.

17 Q. What did you do to educate yourself as to
18 the Keystone technology?

19 MR. SHEEAN: Objection, vague.

20 MR. GISLESON: What -- how is that
21 vague?

22 MR. SHEEAN: The term "Keystone
23 watertube technology" I think is a vague term.

24 Q. (By Mr. Gisleson) What did you do to
25 educate yourself about the Keystone watertube

1 product?

2 A. I had a broad understanding of the
3 product. I relied on my sales engineers that worked
4 for me, my account managers, depending upon title at
5 the time. And I relied on them to properly present
6 the equipment to the client. In terms of educating
7 myself, my main focus was on heat recovery steam
8 generator systems. I did most of my -- my educating
9 was generally focused in that area. And there were
10 times that, I guess, to further my education, I might
11 prepare myself to go with one of my sales engineers
12 to present a proposal to a client so I understood,
13 you know, in a general sense, what we were offering
14 and so forth.

15 Q. Did you ever review any of the design
16 drawings for the Keystone boiler?

17 A. I don't recall.

18 Q. Can you identify any technical information
19 concerning Keystone boilers that you reviewed to
20 assist yourself in learning about the characteristics
21 and features of Keystone watertube boilers?

22 A. I looked at the -- there was a -- there's a
23 cross-section. It's a cutaway section that shows the
24 inner workings of a Keystone boiler, shows the drum
25 internals. The drum internals for Keystone boilers

1 back while you worked with Zurn?

2 A. Sure.

3 Q. Describe what your understanding was of
4 tangent tube walls.

5 A. Tangent tube walls are just simply tubes in
6 the furnace inner -- which the tubes that form the
7 furnace in lieu of a membrane wall, the tubes
8 actually just touch each other. They do not have a
9 gas tight seal either on the inner furnace wall or
10 the outer wall. Typically provided in military
11 specs, and that's generally where they were
12 developed.

13 Q. Can those tangent tubes be seal welded to
14 prevent gas from passing through the tubes?

15 A. I would suppose that could happen.

16 Q. Were you aware of that technology back when
17 you were working for Zurn?

18 A. Yes, sir.

19 Q. Were you aware of membrane wall technology
20 while you were working with Zurn?

21 A. I was -- yes, sir. I was actually aware of
22 membrane wall technology when I worked for Nebraska
23 Boiler in 1984.

24 Q. So that during the time you worked at Zurn,
25 you knew about the difference between tangent tube

1 technology and membrane wall technology?

2 A. Yes, sir.

3 Q. Similarly, when you worked with Erie Power
4 Technologies in 2003, you knew the difference between
5 tangent tube technology and membrane wall technology?

6 A. Yes, sir.

7 Q. How much of your time while you were with
8 Zurn did you spend working on Keystone watertube
9 boilers or working with respect to Keystone watertube
10 boilers?

11 A. It varied. You know, if we had projects
12 that we looked like they were going to -- likely to
13 win to secure these projects, I would have spent more
14 of my time. But, as I said before, my time -- my
15 time was being directed by my superiors, John Barnes
16 Jim Davis and others that I had reported to, to focus
17 my time specifically on HRSGs that brought in the
18 biggest bulk of revenue into the company.

19 Q. While with Zurn, were you involved in the
20 preparation of any sales and marketing materials with
21 respect to Keystone boilers?

22 A. Other than for presentations, Power Point
23 presentations and so forth, you know, yeah, yes.

24 Q. Were there any brochures that were prepared
25 for watertube boilers at that time?

1 required alteration, in your view?

2 A. Membrane wall construction.

3 Q. Anything else?

4 A. The adaptation, flue gas recirculation, I
5 think a --

6 Q. What did you -- I'm sorry, what you did say
7 before flue gas recirculation?

8 A. Adaptation of flue gas recirculation. I
9 think there are given benefits. Emission standards
10 were becoming more restrictive. Furnace volumes were
11 becoming more sensitive. The units were not
12 originally sized to accommodate flue gas
13 recirculation, which would lower the overall emission
14 values to a unit. But it's a variety of issues. One
15 needs to change the product to continue with the
16 market and to continue with the client demand and so
17 forth. And from what I could see, it would appear --
18 and, granted, I didn't work at Zurn in the 1980s and
19 so forth. But what it would appear to me is that
20 there was some resistance to make those changes.

21 Q. While you worked at Zurn, was the Keystone
22 name still well known in the industry?

23 A. It was well known.

24 Q. Did you leave Zurn at some point?

25 A. Yes, sir.

1 marketing I believe was his title.

2 Q. VP sales and marketing for Zurn?

3 A. Well, at that time, it was Aalborg and then
4 Erie Power.

5 Q. What position did Simon Kassas have?

6 A. Originally Simon was a -- I believe a
7 director of purchasing and then eventually was
8 promoted to vice president. I'm not sure if that was
9 purchasing or just a general title.

10 Q. What position did Stephen Kang have?

11 A. President and CEO.

12 Q. Of what company?

13 A. Erie Power Technology.

14 Q. When did you first learn that your position
15 with Zurn was to be eliminated?

16 A. When I was -- when the separation agreement
17 was presented to me on the 14th of July, 2003.

18 Q. Did you have any suspicions prior to that
19 time that your position was to be eliminated?

20 A. Well, sure. We -- we were in dire
21 financial straits. We had prior layoffs. We weren't
22 able to bond or provide any kind of financial
23 security to our clients. And which the HRSG markets
24 that we provided and even the Keystone watertube --
25 or industrial watertube package boiler markets we

1 provided, you can't bond, you're not going to be a
2 player. So, yeah, I had -- I had suspicions.

3 Q. When did those suspicions begin?

4 A. When Aalborg sold the company to Erie
5 Power, Erie Power Technology or DKME Machinery.

6 Q. When was that?

7 A. About 2002 time frame.

8 Q. When in 2002?

9 A. I don't know.

10 Q. And from the time that DKME acquired
11 Aalborg until you were discharged in July 2003, you
12 had those suspicions that your job was at risk?

13 A. Sure.

14 Q. Yes?

15 A. Yes.

16 Q. Were there any prior layoffs of people who
17 had been associated with Keystone watertube boilers?

18 A. Yes.

19 Q. Who?

20 A. Joe Durany. Joe Durany.

21 Q. Anyone else?

22 A. Various people. I don't recall.

23 Q. When did you first meet John Viskup?

24 A. I believe I met John at Power Gen in 2002.
25 I think it was December time frame of 2002.

1 Q. What were the circumstances of your meeting
2 John Viskup at Power Gen?

3 A. John Viskup and Shawn Brewer had attended
4 Power Gen, had told me they were going to be there.
5 Shawn had mentioned that. And Stephen Kang -- we had
6 a booth there, "we" as in Erie Power Technologies.
7 And Victory, also. They didn't have a booth, but I
8 believe they were just walking the floor. And they
9 wanted to meet Stephen Kang, Chairman Kim. They
10 wanted to talk about a license agreement. They
11 wanted to talk about the benefits of a license
12 agreement and I was facilitating to make that happen.

13 Q. What was Power Gen?

14 A. Power Gen is a large industrial turbine
15 expo. It -- it deals with utility, whether it be
16 public, private, power generation. And all of the
17 industrial companies, such as General Electric,
18 Westinghouse, Siemens Westinghouse, Olsten, they
19 provide equipment into that arena, if you will. And
20 it's a -- it's a gathering. There are trade booths
21 for each company. There are seminars and
22 discussions. And it's a -- basically a meeting for
23 all these people to convene to talk, discuss, present
24 their newest technology and sell their potential
25 clients and so forth.

1 Q. Did EPTI have literature on Keystone
2 package watertube boilers at its booth?

3 A. I believe so.

4 Q. How did you know Shawn Brewer?

5 A. Shawn had called me, introduced himself,
6 told me he was with Victory Energy. I don't recall
7 when. And, you know, it just -- introduced himself,
8 said they were, you know, interested. He had gone on
9 board. He understood that Victory had had some prior
10 experience with Aalborg at the time where they had
11 purchased a couple of watertube package boilers and
12 understood that he'd like to take maybe that a little
13 further either through a license agreement or some
14 other way to try to generate some business
15 collectively between the two companies.

16 Q. At the time that you met John Viskup, were
17 you aware that VEO had purchased two Keystone
18 boilers?

19 A. Yes.

20 Q. Did you review the specifications for those
21 two VEO boilers?

22 A. I don't believe so.

23 Q. Did John Viskup describe to you what his
24 assessment was of the Keystone boilers that he had
25 purchased through Aalborg?

1 be generated as part of the license. Beyond that, I
2 don't know the specifics.

3 Q. Was there any discussion as to the specific
4 design parameters for the boiler that was to be
5 licensed?

6 A. I don't know. I wasn't that involved in
7 that discussion.

8 Q. Are you aware of any notes that anyone
9 maintained at that meeting?

10 A. No.

11 Q. Did you have any notes?

12 A. No.

13 Q. Was there any memorandum prepared
14 summarizing the meeting?

15 A. No.

16 Q. Did you, after that meeting, have any
17 conversations with Chairman Kim or Stephen Kang
18 concerning the discussion with John Viskup?

19 A. Yes.

20 Q. When did that occur?

21 A. It occurred in the booth, and it also
22 occurred when we were arrived back, when Stephen Kang
23 and myself arrived back in Erie.

24 Q. Starting with the discussion in the booth,
25 what were you told?

1 A. Proceed. Proceed with the generation of a
2 license agreement, the drafting of an agreement
3 between Victory Energy and Erie Power Technology.

4 Q. Anything more definite?

5 A. No. They said, "Mark, you have the
6 authority to proceed with this agreement."

7 Q. Was there any description as to the design
8 parameters of the boiler that was to be licensed?

9 A. No.

10 Q. Was there any discussion as to the steam
11 flow of the boiler that was to be licensed?

12 A. The discussions -- the discussions, as I
13 recall, focused in the smaller range. The range of
14 where Erie Power Technology was not interested and I
15 believe I had previously stated approximately 150 to
16 187,000 pounds per hour steam. So it would have
17 fallen below 150 -- 100 -- well, at that range, 180
18 to 150,000 pounds per hour.

19 Q. Was there any discussion as to the license
20 fee that EPTI would pay? Strike that.

21 Was there any discussion as to the license
22 fees that VEO would pay under the license agreement?

23 A. Not at that time.

24 Q. When you went back to Erie and spoke with
25 Stephen Kang, what did you discuss concerning the

1 Q. Had you ever previously drafted a license
2 agreement?

3 A. No.

4 Q. This is the very first license agreement
5 you ever drafted?

6 A. Yes, sir.

7 Q. You said you were going to use another
8 agreement?

9 A. Yes, sir.

10 Q. What other -- did you, in fact -- strike
11 that.

12 Did you, in fact, use another agreement as
13 a model for the license agreement you were going to
14 draft with VEO?

15 A. Yes, sir.

16 Q. What agreement was that?

17 A. Rosetti Moreno.

18 Q. What was Rosetti Moran [sic]?

19 A. They were the Italian licensee of Aalborg,
20 Erie.

21 Q. For what technology?

22 A. Heat recovery steam generators.

23 Q. Did Rosetti Moran license Keystone
24 watertube boilers?

25 A. Excuse me, Rosetti Moreno. I'm sorry,

1 would you repeat your question.

2 Q. Did Rosetti Moreno license any Keystone
3 watertube boilers?

4 A. No, sir.

5 Q. Did Stephen Kang tell you to use the
6 Rosetti agreement?

7 A. No, sir.

8 Q. That was your decision alone?

9 A. Yes, sir.

10 Q. Did you make any changes to the Rosetti
11 agreement?

12 A. Yes, sir.

13 Q. What change did you make?

14 A. Well, specifically I don't recall. But the
15 agreement would have had to have been modified. It
16 was for HRSGs. Now we're going into watertube
17 package boilers, specifically Keystone boilers. It
18 was an Italian licensee, which made it an
19 international agreement, so, of course, international
20 provisions really wouldn't apply. So there was a
21 variety of changes that would need to be made, too
22 extensive for me to remember all of them.

23 Q. Did you at any time provide a draft copy of
24 the license agreement to Stephen Kang?

25 A. I don't recall.

1 Q. During that meeting with Stephen Kang to
2 talk through the license agreement, did you review
3 any design drawings for Keystone boilers?

4 A. No.

5 Q. Did you personally, in connection with
6 preparing the license agreement, at any time review
7 any of the design drawings for Keystone package
8 boilers?

9 A. I would have reviewed "M" series drawings.
10 I would have reviewed other drawings just to
11 familiarize myself.

12 Q. Did you, in fact, review the drawings for
13 Keystone --

14 A. Which drawings are you referring to
15 specifically?

16 Q. Any -- any design drawings for Keystone
17 package boilers in connection with preparing of the
18 license agreement.

19 MR. SHEEAN: Objection, asked and
20 answered.

21 MR. GISLESON: No, he said what he
22 would have done.

23 Q. (By Mr. Gisleson) I'm asking what you, in
24 fact, did.

25 A. Well, define -- let's define design

1 drawings.

2 Q. Any of the standard drawings that show the
3 design configuration for the package boilers that
4 were to be licensed.

5 A. The package boilers being what?

6 Q. Being the ones that were the subject of the
7 license agreement, 8M to 22M.

8 A. No.

9 Q. Do you have a specific recollection of
10 reviewing any drawings with respect to Keystone
11 package boilers prior to execution of the license
12 agreement?

13 A. The information that's in Annex.1, Annex.2
14 of the agreement would have been the drawings. That
15 information I had reviewed.

16 Q. Any other drawings?

17 A. Drawings that would have been provided as
18 part of the agreement, most likely.

19 Q. The only drawings with respect to Keystone
20 package boilers that you reviewed are those that are
21 included in the annex to the license agreement?

22 A. There may have been others. That was a
23 long period of time ago and I don't recall.

24 Q. Can you identify any drawing that you
25 reviewed other than the drawings attached to the

1 Annex.1 of the license agreement --

2 MR. SHEEAN: Objection, asked and --

3 Q. (By Mr. Gisleson) -- prior to execution of
4 the license agreement?

5 MR. SHEEAN: Sorry. I object. It's
6 been asked and answered. You can answer again.

7 A. I've answered your question.

8 Q. (By Mr. Gisleson) You haven't. Did you
9 review -- or can you identify -- strike that.

10 Can you identify any drawings that you
11 reviewed prior to execution of the license agreement
12 other than those that are contained within Annex.1 of
13 the license agreement?

14 MR. SHEEAN: Same objection.

15 A. I believe I've answered your question.

16 Q. (By Mr. Gisleson) Can you identify any?

17 A. Would you repeat your question one more
18 time.

19 MR. GISLESON: Can you read it back,
20 please.

21 (The record, as requested, was read by the reporter.)

22 A. No.

23 Q. (By Mr. Gisleson) Did you ever provide any
24 drawings pertaining to the Keystone boilers that were
25 to be licensed to John Viskup prior to execution of

1 the license agreement?

2 A. Me personally?

3 Q. Yes.

4 A. No.

5 Q. Did you direct anyone to send drawings to
6 John Viskup pertaining to the Keystone watertube
7 boilers that were to be licensed?

8 A. No.

9 Q. Did you have any in-person meetings with
10 John Viskup or anyone else from VEO to discuss the
11 license agreement?

12 A. Other than what I'd mentioned, Power Gen,
13 no.

14 Q. You and John Viskup exchanged drafts of the
15 agreement through e-mail, correct?

16 A. Yes, sir.

17 Q. Did you consult with anyone at EPTI or Zurn
18 other than Stephen Kang and Chairman Kim in
19 connection with preparing and -- strike that.

20 Did you consult with anyone other than
21 Stephen Kang, Chairman Kim and Maureen Fiske in
22 connection with preparing the license agreement?

23 A. Marie Fiske.

24 Q. Pardon me?

25 A. Marie Fiske.

1 Q. Describe generally the sequence of events
2 from the time that you first sent a draft of the
3 license agreement to John Viskup until the license
4 agreement was executed.

5 A. Well, to the best of my recollection, I
6 sent an agreement. We probably iterated a very minor
7 issue two or three times. John had mentioned that
8 they had a legal review done of the agreement but
9 felt that he wanted an agreement that Erie felt very
10 comfortable with. Wasn't going to impose any of
11 these changes. Did not impose any of these changes.
12 I believe my comment was we wouldn't have accepted
13 them regardless or the discussions would have been
14 over. And, you know, we got to a point we had a
15 reasonably, you know, agreeable document and we moved
16 that forward.

17 Q. Can you identify any specific subjects of
18 negotiation with John Viskup?

19 A. I think just, you know, the terms of the
20 payments, the initial fees and so forth, when they
21 would be paid, the royalty percentages, capacity
22 arranged. Shawn Brewer was also involved to a
23 certain extent.

24 Q. Any other specific subjects of negotiations
25 with John Viskup?

1 welded wall technology?

2 MR. SHEEAN: Objection, calls for a
3 legal conclusion.

4 A. Once again, I'm not an attorney, but the
5 agreement does talk about alterations, does talk
6 about changes.

7 Q. (By Mr. Gisleson) Is there a specific
8 reference anywhere in the agreement to welded wall
9 technology?

10 A. I don't believe --

11 MR. SHEEAN: Same objection. Sorry.

12 A. I don't believe so.

13 Q. (By Mr. Gisleson) Other than taking your
14 word for it and that of Shawn Brewer, is there any
15 way to prove that that discussion, in fact, occurred?

16 MR. SHEEAN: Objection, badgering the
17 witness. You can answer.

18 A. I don't know.

19 Q. (By Mr. Gisleson) Were there any other
20 conversations you had with someone from VEO about the
21 use of membrane walls or welded wall technology under
22 the license agreement prior to the time the license
23 agreement was executed?

24 A. I don't recall.

25 Q. Is it correct that you never discussed

1 A. No. But no permission would be necessary
2 because it was part of the license agreement.

3 Q. Has VEO provided copies of any of the
4 proposals that it submitted for Keystone boilers to
5 Indeck Keystone Energy?

6 A. Other than through discovery, I don't -- I
7 don't -- I don't believe so.

8 Q. VEO has an obligation to sell -- strike
9 that.

10 VEO has an obligation to send unit sale
11 notifications to the licensor in connection with the
12 sales of watertube boiler it's making, correct?

13 MR. SHEEAN: I'm going to object to
14 the extent it calls for a legal conclusion. You can
15 answer.

16 A. I believe so.

17 Q. (By Mr. Gisleson) In any of the unit sale
18 notifications that you sent to Indeck Keystone
19 Energy, did you disclose the fact that VEO was
20 selling Keystone boilers with membrane wall
21 technology?

22 A. Well, once again, the membrane wall
23 technology was part of the license agreement, so it
24 wouldn't have been necessary.

25 Q. Did you send any unit sale notifications to

1 Indeck Keystone Energy that disclosed the fact that
2 VEO was selling Keystone boilers with membrane wall
3 technology?

4 MR. SHEEAN: Objection, asked and
5 answered because you just asked him the question.

6 MR. GISLESON: He didn't answer it.

7 A. Yes, I said. I said it was part --
8 membrane wall construction was part of the license
9 agreement. Therefore, it wouldn't have been
10 required. So the answer, in terms of within the
11 announcements, would be no.

12 (Off-the-record discussion)

13 (Plaintiff's Exhibit Number 1 was marked
14 for identification.)

15 Q. (By Mr. Gisleson) I'd like to show you
16 what's been marked as White Exhibit 1. It's a
17 document stamped VEO663 through 685. Have you seen
18 this document before?

19 A. I believe so.

20 Q. On the first page, the lower e-mail appears
21 to be one from you to Shawn Brewer --

22 A. Uh-huh.

23 Q. -- dated December 20, 2002, on the subject
24 draft license agreement. You write: "Shawn, as
25 discussed, the draft license is enclosed for your

1 review. Regards, Mike -- Mark White"; is that
2 correct?

3 A. Yes.

4 Q. Why did you send this to Shawn White [sic]
5 rather than to John Viskup?

6 MR. SHEEAN: Objection.

7 Q. (By Mr. Gisleson) I'm sorry. Why did you
8 send this to Shawn Brewer instead of to John Viskup?

9 A. When I sent it to Shawn, Shawn and I were
10 talking daily. And Shawn was in contact with John,
11 so it got to John and they would discuss it. It's
12 just a central point of communication.

13 Q. Why were you speaking with Shawn Brewer
14 daily?

15 A. Just on the license agreement.

16 Q. On what subjects were you having
17 discussions with Shawn Brewer?

18 A. Questions, answers. It may not have been
19 daily, but it was often.

20 Q. Then attached to this is a draft license
21 agreement, correct?

22 A. It would appear so.

23 Q. Then if you look at Page VEO683, the VEO
24 numbers in the lower right-hand corner --

25 A. Which number are you referring?

1 Q. VEO683.

2 A. Six-eight-three?

3 Q. Correct.

4 A. Okay.

5 Q. This is another e-mail dated December 20,
6 2002, that you sent to Shawn Brewer on the subject of
7 license agreement in which you write: "Shawn,
8 enclosed is a data table which provides the details
9 of the capacity range and models that the license
10 agreement will cover"; is that correct?

11 A. Yes.

12 Q. And you read the data table before you sent
13 it to Shawn Brewer, correct?

14 A. I would have looked at it, yes.

15 Q. From where did you obtain this data table?

16 A. I don't recall.

17 Q. Is that your handwriting on Page VEO684?

18 A. It would appear so. I can't be sure.

19 Q. Was the selection of 100,000 as the steam
20 capacity simply an arbitrary cutoff that you
21 personally selected?

22 MR. SHEEAN: Object to the term
23 "arbitrary". You can answer.

24 A. It was discussed prior with both Shawn and
25 John as a -- as a range, 29,000 to 100,000 pounds per

1 hour as a starting point for discussions. The draft
2 reflects that.

3 Q. (By Mr. Gisleson) Why use that as a
4 starting point rather than simply identify whatever
5 the full range of products was that EPTI was willing
6 to license?

7 A. Well, capacity ranges is easily definable.
8 We all knew that going into this agreement, "we" as
9 in Shawn -- or Victory Energy and Erie Power
10 Technologies, that this technology was dated. It was
11 going to require enhancements, change and so forth.
12 And it was easier to define a capacity range knowing
13 that the models were going to require alterations and
14 so forth. And the capacity ranges is simply
15 dictating the markets in which they are going to
16 pursue. Industrial steam markets can be defined
17 through capacity much easier than it can through
18 boiler models.

19 Q. And the draft license agreement from VE0664
20 through 682 was based on the Rosetti license; is that
21 correct?

22 A. Yes, sir.

23 Q. Looking at Page VE0665, there's a
24 definition of improvements. Do you see that?

25 A. Yes, sir.

1 Q. Did you make any changes to the definition
2 of improvements that was in the Rosetti license?

3 A. I don't recall.

4 Q. Did you make any handwritten markups to the
5 license agreement as you were drafting it?

6 A. You know, I may have, but I wouldn't know
7 unless I looked at it.

8 Q. Were there any negotiations with John
9 Viskup, Shawn Brewer or anyone at VEO concerning the
10 wording of Paragraph 1-H involving improvements?

11 A. I don't recall.

12 Q. Under 1-K there's a definition of mark. Do
13 you see that?

14 A. Yes, sir.

15 Q. And you understood that one of the marks
16 that was being licensed was Keystone, correct?

17 A. Yes, sir.

18 Q. On Page VEO669, Clause 5 involves secrecy.
19 Do you see that?

20 A. Clause 5?

21 Q. Yes.

22 A. Yes, I see it.

23 Q. Was it important to you that if this
24 license agreement was entered with VEO, that VEO
25 maintain secrecy over the technical information it

1 received from EPTI?

2 A. In terms of the secrecy, the understanding
3 and the intent of the agreement was to limit design
4 details, such as separation devices, those type of --
5 that type of information, what we would consider
6 proprietary, but not to limit proposal-type
7 information. And when selling anything, it would
8 have been entirely impossible for Victory to limit
9 technical information to the extent not providing it
10 to their clients. You couldn't even provide a
11 proposal. It wouldn't have been a practical
12 agreement.

13 Q. Is there any carve out that you're aware of
14 in the license agreement for that kind of proposal
15 information you just described?

16 MR. SHEEAN: I'm going to object to
17 the extent it calls for a legal conclusion.

18 A. I'm not an attorney, but under 2.A, under
19 selling rights: The exclusive license to manufacture
20 the products and to sell -- or to offer, sell and
21 install the products so manufactured, and use the
22 technical information connected therewith. I'm not
23 an attorney, but to me that implies that you use the
24 information to provide -- to sell and market these
25 boilers.

1 Q. (By Mr. Gisleson) Anything else?

2 A. Without doing a thorough review of the
3 document, I couldn't say.

4 Q. On Page VEO670 under Clause 6 for
5 compensation, it refers to a technology disclosure
6 fee of \$75,000. How did you arrive at the \$75,000
7 figure?

8 A. It was discussed with Stephen. There may
9 have been others in the discussion. It was a
10 starting point for the negotiations. I recall it was
11 later reduced to somewhere around \$20,000.

12 Q. Turning to Page VEO671, Clause 8 refers to
13 modifications to products by licensee. Are you aware
14 of any changes to Clause 8 from this draft based on
15 discussions that you had with John Viskup, Shawn
16 Brewer or anyone else from VEO?

17 A. No.

18 Q. Turning to Page VEO672, Clause 9 for
19 workmanship, are you aware of any changes that were
20 made to the language in that clause based on
21 discussions you had with John Viskup, Shawn Brewer or
22 anyone else from VEO?

23 A. I don't recall.

24 Q. Turn to Page VEO675, Clause 13,
25 improvements. Are you aware of any changes to the

1 language in that clause based on conversations you
2 had with John Viskup, Shawn Brewer or anyone else
3 from VEO?

4 A. I'm not aware of any.

5 Q. Turn to Page VEO676. Clauses 14 and 15
6 refer to copyrights and trademarks respectively. Are
7 you aware of any changes that were made to the
8 language in those clauses based on conversations you
9 had with John Viskup, Shawn Brewer or anyone else
10 from VEO?

11 A. I don't recall.

12 Q. Was it always your expectation that VEO
13 preserve and protect the copyright and trademark
14 rights that EPTI had?

15 A. Yes.

16 Q. As of the time that the license agreement
17 was executed with VEO, did you care whether VEO
18 complied with the license agreement?

19 A. Absolutely.

20 Q. Why?

21 A. Why did I care?

22 Q. Yes.

23 A. Well, I was an employee of Erie Power
24 Technology, and as such, it was my responsibility to
25 administrate this document and implement this

1 document, execute this document in the best interest
2 of Erie Power Technology. In addition to that, you
3 know, this document was drafted in a broad sense to
4 understand that both parties, Erie Power Technology
5 and Victory Energy, would enter into an agreement
6 where we would be successful, where both parties
7 could be successful. You know, limiting
8 documentation, trying to make this very difficult
9 would have defeated the entire point of putting this
10 together.

11 Q. Do you know who drafted the original
12 Rosetti license agreement?

13 A. I believe it's Jim Davis.

14 Q. Did you speak with Jim Davis about what he
15 intended by the different provisions in the Rosetti
16 license?

17 A. No.

18 Q. So you don't have any personal knowledge,
19 one way or the other, as to what Jim Davis intended
20 by certain provisions in the license agreement,
21 correct?

22 A. In the Rosetti agreement?

23 Q. Yes.

24 A. No.

25 THE WITNESS: I'd like to take a

1 break.

2 MR. GISLESON: Yeah, let's take a
3 break.

4 (Break was taken)

5 Q. (By Mr. Gisleson) Under Clause 15-B-2 of
6 the December 20, 2002, draft license agreement, it
7 says: "Licensee acknowledges that the mark, the
8 property solely of Licenser, is of great commercial
9 value to Licenser and represents the good will and
10 wide recognition attained by Licenser's high quality
11 of products. All use of the mark by Licensee,
12 including any good will arising out of such use,
13 shall be solely to the benefit of Licenser."

14 It was your belief, wasn't it, as of the
15 time the license agreement was executed, that the
16 mark owned by Erie Power Technologies, particularly
17 the Keystone trademark, was of great commercial value
18 to EPTI and represented the good will and wide
19 recognition attained by EPTI's high quality products?

20 A. In terms of the definition, yeah. You
21 know, it was valuable to Erie Power Technologies.

22 Q. And it was your expectation, wasn't it,
23 that all use of the Keystone mark by VEO, including
24 any good will arising out of such use, shall be
25 solely to the benefit of EPTI, correct?

1 A. Yes.

2 Q. Was there any negotiation or change to that
3 language at any time by VEO?

4 A. Not that I recall.

5 Q. Under Clause 16, duration of agreement,
6 Subparagraph C, it's in bold highlighting and it
7 says: "In the event Licensee has not received during
8 the first two years a minimum of five orders for the
9 products, Licensor has the right to terminate the
10 agreement." Do you see that?

11 A. Yes, sir.

12 Q. Whose language was that?

13 A. I don't recall.

14 Q. Was this the first draft of the license
15 agreement?

16 A. You know, I don't know without looking at
17 all of the information. It may have been, it may not
18 have been.

19 Q. Was this a document that you maintained on
20 the hard drive of your computer at EPTI?

21 A. You know, I don't know. It could have been
22 maintained on the company directory or it could have
23 been maintained on the hard drive. Once again,
24 without having the document and having the directory,
25 I wouldn't know.

1 Q. Do both of those individuals still work for
2 VEO?

3 A. McConaughy has tendered his resignation.
4 As of today, he is no longer working for us.

5 Q. Did he tell you why he's no longer working
6 for VEO?

7 A. Yeah, he's going to work for Erie Power
8 Technology -- or EPTI CMI as a project manager. And
9 the reason being is he lives in Pennsylvania and he's
10 tired of traveling back and forth.

11 Q. Any other reasons he provided to you?

12 A. No.

13 Q. On Page VE0679, Clause 21 of the December
14 20, 2002, draft license agreement, it says: "This
15 agreement shall not be modified except by a
16 supplemental written agreement executed by an
17 authorized representative of both of the parties
18 hereto." Were you the authorized individual from
19 EPTI while you were employed there to sign
20 supplemental written agreements that modified the
21 final executed license agreement?

22 A. I was given full authority to execute and
23 administrate this agreement by Stephen Kang and
24 Chairman Kim.

25 Q. Did you, in fact, enter certain

1 supplemental written agreements to modify the license
2 agreement?

3 A. Other than the addendums or the additional
4 annexes that came later, such as the increased
5 pressure and temperature and superheat and so forth.

6 Q. Was that the only supplemental written
7 agreement that you executed on behalf of EPTI to
8 modify the license agreement?

9 A. I believe so.

10 Q. Turning to Page VE0681, Clause 24,
11 integration, merger and waiver, Subpart A reads: The
12 terms and provisions contained in this agreement are
13 the full agreement of the parties pertaining to the
14 subject matter of this agreement and are fully set
15 forth herein, and no prior understanding or
16 obligation not expressly set forth herein shall be
17 binding upon the parties to this agreement, and no
18 subsequent modification of this agreement shall be
19 binding upon the parties unless negotiated upon the
20 terms herein provided and executed with the same
21 formalities as this agreement.

22 Are you aware of any changes to the
23 language of that paragraph in connection with your
24 discussions with either John Viskup, Shawn Brewer or
25 anyone else on behalf of VEO?

1 for identification.)

2 Q. (By Mr. Gisleson) I'd like to show you
3 what's been marked as White Exhibit 4. It's a
4 document stamped IKE336 to 337. Does this include an
5 e-mail exchange that you had with Bob Gdaniec on
6 January 8, 2003, concerning the license agreement?

7 A. It would appear so.

8 Q. In Mr. Gdaniec's e-mail to you at the
9 bottom of the first page, he writes in the third
10 sentence: "If Victory Energy thinks they can be
11 successful at selling the Keystone, why aren't we
12 taking the same/similar approach and selling it
13 here?" Did you, in your capacity as having
14 responsibility for sales, at any time analyze the
15 market prior to entering the license agreement to
16 determine whether it was an opportunity for EPTI to
17 pursue?

18 A. Absolutely. I worked in the market. I
19 discussed this with Stephen Kang. We were not
20 successful. "We," as in Erie Power, Zurn, Aalborg
21 and Aalborg Keystone were not successful in selling
22 the Keystone. The ABMA information in sales and
23 sales -- sales reporting information would dictate
24 that. When you have literally less than five to
25 maybe a fraction of the percent of the market, you

1 as we see fit." Is that an accurate statement based
2 on your understanding of the license agreement?

3 MR. SHEEAN: Objection, calls for a
4 legal conclusion.

5 A. I'm not an attorney, but my understanding
6 of the license agreement, it -- the improvements will
7 be owned by the party that develops those
8 improvements.

9 Q. (By Mr. Gisleson) But in your e-mail to Bob
10 Gdaniec, you say: "Any updates or improvements will
11 be owned by EPTI for possible use as we see fit."

12 A. Yeah, that's an inaccurate statement.

13 Q. Did you ever correct the statement you made
14 to Bob Gdaniec in this e-mail?

15 A. I don't recall.

16 Q. Can you identify any improvements for
17 Keystone watertube boilers that were made by VEO that
18 it intends to keep for itself after the conclusion of
19 the license agreement?

20 A. No.

21 Q. Has anyone at VEO ever told you that they
22 developed an improvement that, in their view, VEO can
23 keep at the conclusion of the license agreement?

24 A. No.

25 Q. How did you get along with Bob Gdaniec?

1 | boilers.

2 Q. Did you trust Dave's judgment?

A. Sometimes.

4 Q. Did you believe he was knowledgeable
5 concerning the design of the Keystone boilers?

6 A. He had some knowledge in the design, but it
7 wasn't to the extent that I had a great faith in his
8 background.

9 (Plaintiff's Exhibit Number 5 was marked
10 for identification.)

11 Q. (By Mr. Gisleson) I'd like to show you
12 what's been marked as White Exhibit 5. It's a
13 document stamped VEO731 to 750. Do you see how this
14 is a January 8th, 2003, e-mail with enclosure from
15 Marie Fiske to John Viskup, cc to you, transmitting a
16 conformed license agreement for signature?

17 A. Yes, I see that.

18 Q. Did you have an understanding as to what
19 Marie Fiske meant by a conformed license agreement
20 for signature?

21 A. No, I do not.

22 Q. She then writes: "I have not --" oh, are
23 you the one who wrote this? The e-mail says: "John,
24 the following message and attachment are being
25 forwarded to you at the request of Mark White." And

1 then there's a paragraph that says: "Enclosed is the
2 conformed license agreement for signature. I have
3 not yet completed the annexes. I suggest that we
4 sign the agreement, and when completed, initial off
5 each annex. Please sign two copies of the document
6 and forward to me for signature. We will return one
7 for your files."

8 A. It would appear that -- yeah, that I had
9 had Marie forward this over to John.

10 Q. Do you have any understanding what she did
11 to conform the license agreement?

12 MR. SHEEAN: Objection, asked and
13 answered.

14 A. I don't recall.

15 Q. (By Mr. Gisleson) Or did you conform the
16 agreement?

17 A. I don't recall.

18 Q. As of January 8th, 2003, the draft annex
19 that you transmitted on December 20, 2002, to VEO had
20 not been finalized yet, correct?

21 A. That would appear to be the case.

22 Q. Why didn't you finalize Annex.1 to the
23 license agreement prior to having the license
24 agreement signed by VEO?

25 A. I don't recall.

1 Q. Do you have any explanation for that?

2 A. I don't recall. I mean, if I had my notes,
3 it might be -- be a little easier.

4 Q. You agree, don't you, that Annex.1 is part
5 of the license agreement?

6 A. Yeah, it's part of the agreement.

7 Q. What was the purpose of Annex.1?

8 MR. SHEEAN: Objection, calls for a
9 legal conclusion.

10 Q. (By Mr. Gisleson) What did you understand
11 to be the purpose of Annex.1?

12 A. I gave a -- basically Annex.1 is -- would
13 set some geometry, but the agreement was not to be
14 limited to that geometry. Basically what it was was
15 a road map for Victory Energy to use these models in
16 combination with the agreement.

17 Q. What do you mean by the fact that Annex.1
18 set some geometry?

19 A. Well, there's geometry that's defined in
20 Annex.1 that when the agreement -- the intent of the
21 agreement was never to limit the -- the geometry of
22 the units within that annex.

23 Q. What do you mean by geometry?

24 A. Dimensions.

25 Q. Are you saying that VEO, in your view, had

1 discussed more the HRSG side of the business. Again,
2 my background is HRSGs predominantly, not Keystone
3 boilers, so we discussed that. We also discussed my
4 commercial knowledge, different things like that,
5 operations and so forth.

6 Q. What was discussed concerning Keystone
7 boilers?

8 A. Just the license agreement, and John had
9 some concerns that if I came on board, would there be
10 problems, you know, from the Erie side, the fact that
11 I had -- I was the author of the license agreement.
12 And if I came to work for Victory, it may be
13 cancelled. So there was some definite concerns from
14 John's side if I was employed with Victory Energy
15 they could lose the license agreement.

16 Q. Did you disclose any confidential
17 information of EPTI concerning HRSGs to VEO?

18 A. No.

19 (Plaintiff's Exhibit Number 6 was marked
20 for identification.)

21 Q. (By Mr. Gisleson) I'd like to show you
22 what's been marked as White Exhibit 6. It's a
23 document stamped IKE4410 through 4429. Do you see
24 how this is another copy of your January 8, 2003,
25 e-mail to John Viskup with the enclosed license

1 agreement for signature?

2 A. Yes, sir.

3 Q. Whose handwriting is on the first page of
4 this exhibit?

5 A. That's my handwriting.

6 Q. And you wrote: "To Bob, Dan, Jim, Dave,
7 Neil. Conformed version for review. Regards, Mark
8 White." Who is Bob?

9 A. That would have been Bob Gdaniec.

10 Q. Dan?

11 A. Levstek.

12 Q. Jim?

13 A. I don't recall his last name.

14 Q. Dave?

15 A. Briggs.

16 Q. Neil?

17 A. Bradwell.

18 Q. Why were you sending the conformed version
19 for review to those individuals?

20 A. I don't recall.

21 Q. What did you mean by review?

22 A. How do you define review? Just read
23 through the document, let me know if you have any
24 questions.

25 Q. Were you giving them an opportunity to make

1 watertube boilers while you worked with EPTI?

2 A. They may have.

3 Q. Do you recall specifically whether you
4 received any?

5 A. No.

6 Q. Did you ever at any time while you worked
7 with EPTI after the license agreement was executed
8 review the license agreement to determine whether a
9 particular boiler that was sold by VEO was outside of
10 the scope of the license agreement?

11 A. No.

12 Q. Were there instances while you were
13 employed with EPTI that engineers or others at EPTI
14 advised you of their belief that VEO was selling
15 watertube boilers outside of the scope of the license
16 agreement?

17 A. They may have. I don't recall.

18 (Plaintiff's Exhibit Number 8 was marked
19 for identification.)

20 Q. (By Mr. Gisleson) I'd like to show you
21 what's been marked as White Exhibit 8. Is this a
22 true and correct copy of an e-mail that you received
23 from Bob Gdaniec on John 14, 2003, on the subject of
24 Keystone product line license agreement?

25 A. It would appear so.

1 Q. Bob Gdaniec writes to you that: "I have
2 started to put together both my estimate on hours and
3 scope for the license agreement for the package
4 boiler line with Victory and, unfortunately, have not
5 got it completed yet." Was that information that you
6 requested Mr. Gdaniec to provide to you?

7 A. I don't recall.

8 Q. He then requests a draft of the annex that
9 you were writing; is that right?

10 A. I haven't finished reading it. May I read
11 this?

12 Q. Sure.

13 A. Would you -- would you please repeat your
14 question.

15 Q. Sure. At the end of the first paragraph,
16 Mr. Gdaniec writes: "If you get the draft of the
17 annex written, please e-mail me a copy." Do you see
18 that?

19 A. Yes.

20 Q. Did you, in fact, send a draft of the annex
21 to Bob Gdaniec?

22 A. I don't recall.

23 Q. You were the individual at EPTI responsible
24 for writing the Annex.1 to the license agreement,
25 correct?

1 A. I believe so.

2 Q. Mr. Gdaniec then writes: "At this point,
3 as a recap of where we believe we are going with
4 this, the scope will be the standard package boiler
5 line that is rated at steam flows from 29,000 to
6 150,000, which for us is the 8M through the 22M
7 Keystone. This is a boiler that is limited to a 250
8 psig MAWP and is based on no economizer and no flue
9 gas recirculation, with performance rating based on
10 15 percent excess air. The general arrangement of
11 the boilers will be defined by the KDB sheets with
12 all tubes rolled into radially drilled tube holes.
13 Any deviation from the above definition would be
14 outside of the product license agreement."

15 Based on your understanding in negotiating
16 and executing the license agreement with VEO, did Bob
17 Gdaniec accurately describe the scope of the license
18 agreement?

19 A. No.

20 Q. Did you tell him that he did not properly
21 define the scope of the license agreement?

22 A. I don't recall.

23 Q. Are you aware of any documentation that
24 exists in which you advised Mr. Gdaniec that his
25 understanding as to the scope of the license

1 agreement is incorrect?

2 A. I don't know. I don't recall unless you
3 have -- you can produce something through discovery.

4 Q. Who had a better understanding as to what
5 the design of the standard Keystone package boiler
6 is, you or Bob Gdaniec?

7 MR. SHEEAN: Objection, vague.

8 A. I don't know.

9 Q. (By Mr. Gisleson) Who do you think has a
10 better understanding as to the design of the Keystone
11 package watertube boilers, you or Dave Briggs?

12 MR. SHEEAN: Objection, vague.

13 A. In terms of the overall design?

14 Q. (By Mr. Gisleson) Yes.

15 A. Me.

16 (Plaintiff's Exhibit Number 9 was marked
17 for identification.)

18 Q. (By Mr. Gisleson) I'd like to show you
19 what's been marked as White Exhibit 9. Is this a
20 true and correct copy of an e-mail that you sent to
21 Bob Gdaniec, Ted Fuhrman and Dave Briggs on the
22 subject of license product description?

23 MR. SHEEAN: Well, I'm going to object
24 to the use of this document because it does not
25 appear on its face as though it's been produced in